



Decision

Matter of: Mississippi State Department of
Rehabilitation Services

File: B-250783.8

Date: September 7, 1994

Pamela J. Mazza, Esq., Piliero, Mazza & Pargament, for the
protester.

Marcus A. Hart for Delta Food Service, an interested party.
Gregory H. Petkoff, Esq., Brenda Anna Juliette Paknik, Esq.,
and Wilbert Jones, Esq., Department of the Air Force, for
the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protest by state licensing agency (SLA) for the blind
alleging that agency has violated the terms of the Randolph-
Sheppard Act in eliminating its proposal from the
competitive range is dismissed; General Accounting Office
will not consider protests from SLAs because arbitration
procedures are provided for under the act, and decisions of
the arbitration panel are binding on the parties involved.

DECISION

The Mississippi State Department of Rehabilitation Services
(MSDRS) protests the elimination of its proposal from the
competitive range under request for proposals (RFP)
No. F22600-92-R-0156, issued by the Department of the Air
Force for full food services at Keesler Air Force Base. The
protester argues that the elimination of its proposal
contravened the Randolph-Sheppard Act (the act), 20 U.S.C.
§ 107 et seq. (1988).

We dismiss the protest.

The RFP, issued on an unrestricted basis, contemplated that
award would be made to the firm submitting the lowest-
priced, technically acceptable proposal, but also advised
prospective offerors that the acquisition would be subject
to the act, which provides a priority for blind vendors in
the award of contracts for cafeteria operations; under the
act's implementing regulations, 34 C.F.R. part 395 (1993),

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if a designated state licensing agency (SLA)¹ submits an offer found to be within the competitive range for the acquisition, award must be made to the SLA.

In response to the solicitation, the Air Force received numerous offers, including one from MSDRS, an SLA. After an initial evaluation, the agency determined that 15 offerors, including MSDRS, had submitted proposals within the initial competitive range. The agency then engaged in discussions and made a second competitive range determination. MSDRS' offer was found to be outside the competitive range in this determination for two reasons: (1) the agency found that MSDRS had not included adequate information in its proposal to show that it would use sighted employees only where reasonably necessary (an RFP requirement for the SLA offeror)²; and (2) its price was so high compared to the other competitive range proposal prices that it had no reasonable chance for award. After making this final competitive range determination, the Air Force solicited best and final offers from the firms remaining in the competitive range.

MSDRS protests that both reasons for eliminating its proposal from the competitive range--and thereby denying it the award--were improper under the act. Specifically, MSDRS contends that it was improper to reject its proposal on the basis that it failed to adequately show how it would maximize the use of blind employees, and on the basis that its price was too high.

The statute was enacted to promote uniformity of treatment of blind vendors by all federal agencies, establish consistent guidelines for all SLAs, establish administrative and judicial procedures to ensure fair treatment of blind

¹Under the act, the Secretary of Education receives and approves the applications of entities in each state to become the SLA responsible for selecting blind vendors to operate cafeterias and vending facilities on federal property, and to ensure that the vendors comply with the requirements of the act. When the Secretary approves an applicant, the entity becomes the designated SLA for the state.

²The RFP provides that the SLA must "adequately explain in [its] proposal how [it] will ensure that sighted employees or assistants are utilized only to the extent reasonably necessary." This RFP clause derives from a provision of Department of Defense Directive No. 1125.3, which requires the head of the cognizant Defense Department component to ensure that any blind vendors use sighted employees only to the extent reasonably necessary.

vendors, federal agencies and SLAs, and create stronger administrative and oversight powers in the agency responsible for carrying out the program. Pub. L. No. 93-651, § 201, 89 Stat. 2-3, 2-7 (1974), 20 U.S.C. § 107 note (1988). The act vests authority for administering and overseeing its requirements solely with the Secretary of Education, 20 U.S.C. § 107 et seq. Pursuant to this authority, the Secretary has promulgated comprehensive regulations addressing all aspects of the act's requirements. Among the matters covered by these regulations are such things as rules governing the relationship between the SLAs and blind vendors in each state, rules for becoming a designated SLA within the meaning of the act, procedures for oversight of the SLAs by the Secretary, and rules governing the relationship between the SLAs and all federal government agencies. 34 C.F.R. part 395.

The Secretary's authority under the act also includes conducting arbitration proceedings. In this regard, the statute provides, in relevant part, as follows:

"Whenever any [SLA] determines that any department, agency, or instrumentality of the United States that has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of [the Act] or any regulations issued thereunder . . . such [SLA] may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute . . . and the decision of the panel shall be final and binding on the parties except as otherwise provided in this chapter."

20 U.S.C. § 107d-1(b). The panel's decision is final and binding on the parties. 20 U.S.C. § 107d-2; 34 C.F.R. § 395.37(b).

Where, as here, Congress has vested exclusive oversight and decision-making authority in a particular federal official or agency, our Office will not consider protests involving issues which are properly for review by that official or

³The arbitration panel was envisioned by Congress as a mechanism to "provide a means by which aggrieved vendors and state agencies may obtain a final and satisfactory resolution of disputes." S. Rep. No. 937, 93d Cong., 2d Sess. 20 (1974).

agency.⁴ For example, we do not review determinations by the Committee for Purchase from People Who are Blind or Severely Disabled to place particular items for purchase by the federal government on its procurement list under the authority of the Javits-Wagner-O'Day Act, 41 U.S.C. §§ 46-48c (1988 and Supp. IV 1992). ARA Environmental Servs., Inc., B-254321, Aug. 23, 1993, 93-2 CPD ¶ 113. Similarly, we do not review responsibility determinations made by the Small Business Administration under the certificate of competency program pursuant to 15 U.S.C. § 637(b)(7) (1986), since that agency is vested with conclusive authority over such determinations. S&F Indus.--Recon., B-255134.2, Dec. 13, 1993, 93-2 CPD ¶ 314. Since the Secretary's

⁴MSDRS argues that it should not be required to use the arbitration procedure because the remedy under the procedure is inadequate in that the Secretary does not have authority to stay the award or performance of the contract. While this may be so, it does not warrant our considering this type of dispute in view of Congress' clear intent to vest authority to resolve disputes of this nature with the Secretary. In any event, the Secretary's authority under the act includes broad remedial powers, and he may also provide for expedited consideration of the dispute, thereby minimizing the impact of not having a stay of award or performance. Randolph-Sheppard Vendors of Am., et al. v. Weinberger, 795 F.2d 90 (D.C. Cir. 1986).

authority extends to complaints by SLAs concerning an agency's compliance with the act,⁵ we will not review MSDRS' protest.

The protest is dismissed.

/s/ Robert H. Hunter
for Robert P. Murphy
Acting General Counsel

⁵This interpretation is consistent with the views of the Secretary. When promulgating the regulations governing the arbitration procedures, the Secretary commented:

"it is expected that when [an SLA] is dissatisfied with an action resulting from its submittal of a proposal for the operation of a cafeteria, it will exercise its option to file a complaint with the Secretary. . . ."

42 Fed. Reg. 15,809 (1977).

⁶MSDRS contends that because we previously took jurisdiction over this matter in our decision Department of the Air Force--Recon., 72 Comp. Gen. 241 (1993), 93-1 CPD ¶ 431, aff'd, Triple P Services, Inc.--Recon., B-250465.8; B-250783.4, Dec. 30, 1993, 93-2 CPD ¶ 347, we should consider this protest. However, our decision there was in response to a request, not by an SLA, but by the Air Force, several 8(a) small business protesters (the acquisition had previously been set aside under the Small Business Act's section 8(a) program) and the Small Business Administration. Since the arbitration procedure is available only to SLAs, our review there was appropriate.